

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LISA ZAYAS, CATALINA OCAMPO, and DEBORAH JEAN, individually and on behalf of all others similarly situated, <div style="text-align: right;">Plaintiffs,</div> <div style="text-align: center;">v.</div> EDGEWELL PERSONAL CARE COMPANY, EDGEWELL PERSONAL CARE BRANDS, LLC, EDGEWELL PERSONAL CARE, LLC, PLAYTEX PRODUCTS, LLC, SUN PHARMACEUTICALS, LLC; <div style="text-align: right;">Defendants.</div>	<div style="text-align: center;">Case No. 4:21-cv-00797-SRC DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT</div>
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Defendants Edgewell Personal Care Company, Edgewell Personal Care Brands, LLC, Edgewell Personal Care, LLC, Playtex Products, LLC, and Sun Pharmaceuticals, LLC (collectively, “Defendants”) move this Court to dismiss the putative First Amended Class Action Complaint (“FAC”) (Dkt. #19) filed by Plaintiffs Lisa Zayas, Catalina Ocampo, and Deborah Jean (“Plaintiffs”) pursuant to Federal Rules of Civil Procedure 8, 9(b), 12(b)(1), and 12(b)(6).

Under Rule (12)(b)(1), this Court lacks subject matter jurisdiction because Plaintiffs fail to allege facts to establish a concrete and particularized injury-in-fact that is not premised on a hypothetical risk as required to establish Article III standing. Plaintiffs’ claims should be dismissed under Rule 12(b)(6) because no reasonable consumer would be misled by the label and alleged advertisements in the way that Plaintiffs have alleged. Plaintiffs fail to satisfy Rule 9(b)’s heightened pleading standard and have not alleged facts sufficient to state a plausible claim for relief. Plaintiffs also fail to allege ascertainable loss as required to state a claim under the consumer protection statutes. Further, Plaintiffs’ claims for equitable relief should also be dismissed because

Plaintiffs have not alleged that they lack an adequate remedy at law. Pursuant to U.S. const. art. VI, cl. 2, Plaintiffs' claims are also expressly and impliedly preempted by the Federal Food, Drug, and Cosmetic Act.

Based on the reasons set forth in this Motion, the accompanying Memorandum in Support, the Declaration of Anastasia (Tsacalis) Tobias with exhibit attached thereto, and the Declaration of Megan McCurdy with the exhibits attached thereto, this Court should enter an Order granting Defendants' Motion to Dismiss Plaintiffs' First Amended Class Action Complaint with prejudice and enter judgment in favor of Defendants along with such other and further relief as this Court deems just and proper.

Respectfully submitted,

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By: /s/Megan McCurdy

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 30th day of August, 2021, the above and foregoing was filed with the Clerk of the Court through the CM/ECF system, which will send electronic notification to all counsel of record.

/s/Megan McCurdy

ATTORNEY FOR ALL DEFENDANTS